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In the

Supreme Court of the United States

OCTOBER TERM, 1899

NORTH AMERICAN TRANSPORTATION & TRADING COMPANY,

Plaintiff in Error,

vs.

RONZELO MORRISON,

Defendant in Error.

In Error to the Circuit Court of the United States for the District of Washington.

BRIEF OF DEFENDANT IN ERROR.

JOHN ARTHUR AND L. H. WHEELER,

Counsel for Defendant in Error.

Pigott & French Co., Printers, Seattle, Wash.

NO. 203.

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NORTH AMERICAN TRANSPORTATION & TRADING COMPANY,
Plaintiff in Error,
vs.
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Defendant in Error.

In Error to the Circuit Court of the United States for the District of Washington.

BRIEF OF DEFENDANT IN ERROR

ARGUMENT.

The question raised in the three points discussed in plaintiff in error's brief is the jurisdiction of the Circuit Court. Defendant in error bases the first cause of action upon plaintiff in error's breach of the agreement, made August 3, 1897, to carry him from Seattle to Dawson City, reaching latter place

by September 15, 1897; to supply him with board throughout said journey, and at Dawson sell to him goods and mining supplies sufficient for one year's use; also to recover the Two Hundred Dollars ($200) passage money paid plaintiff in error; Seventy-Two Dollars and Fifty Cents ($72.50), extra travelling expenses; Twenty-Nine Dollars and Seventy-five Cents ($29.75) for loss of baggage; and Two Thousand Dollars ($2000) damages for the breach. (Complaint, Par. IV, V, VI; Transcript, pp. 2, 3).

The seven succeeding causes of action are based upon the same kind of demands, excepting as to loss of baggage; and the lowest demand in any of them is Two Thousand, Two Hundred and Sixty-one Dollars and Twenty-five Cents ($2261.25).

The suit was begun in the Superior Court of King County, Washington, and was filed November 30, 1897. (Transcript, p. 24). December 7, 1897, plaintiff in error filed its petition for removal to the Circuit Court, alleging that the matter in dispute, exclusive of interests and costs, exceeded the sum of Two Thousand Dollars ($2000), and "that the controversy in said suit is between citizens and residents of different states"; and showing the diversity of citizenship of plaintiff in error and defendant in error. (Transcript, pp. 32, 33).

The cause was removed, pursuant to said petition. January 27, 1898, plaintiff in error filed its demurrer to the jurisdiction of the Circuit Court, and upon the hearing thereof,

February 7, 1898, sought to have the case dismissed or remanded to the Superior Court. (Transcript, p. 38).

The first cause of action is clearly one involving an amount in excess of Two Thousand Dollars ($2000), and the diversity of citizenship is sufficiently alleged. For the purpose of determining the jurisdiction of the Circuit Court, at the time of the consideration of plaintiff in error's motion to remand the cause, the amount claimed by defendant in error in the first cause is taken as confessed. Plaintiff in error, by its sworn petition for removal, alleges that the controversy is one between citizens of different states. Immediately upon the removal, plaintiff in error applied to remand it, notwithstanding its own sworn statement. Upon the hearing of plaintiff in error's motion, the Circuit Court says: "It is not the intention of the law to work an injustice to a plaintiff by authorizing a defendant to remove a cause into the United States Circuit Court, and by that proceeding deprive the plaintiff of the right, which the law gives him, of joining in one action several causes of action. The right of removal is for the purpose of having an adjudication upon the merits, and is not given for the mere purpose of defeating a right of action without a trial on the merits." Plaintiff in error's purpose is manifestly one of delay. It removed the cause and then sought to remand it. It seeks to prevent an adjudication of the controversy. Defendant in error's motion to dismiss the writ, affirm the judgment with costs, and award him damages in the sum of ten per cent. of the judgment by reason

of the writ's being sued out manifestly for the purpose of delay, should be granted.

Respectfully submitted,

JOHN ARTHUR, AND

L. H. WHEELER,

Counsel for Defendant in Error.